

Atheist Ireland



Submission to the Consultation for the Irish Human Rights and Equality Commission Strategy Statement 2022-24

15 August 2021

Background

Atheist Ireland is a Civil Society Organisation

Our work relates primarily to the human rights area of religion *or belief,* equality before the law, freedom from discrimination, and the right to an effective remedy.

The 'religion or belief' option is described only as 'religion' in the check-list on this IHREC submission form. We understand that in the nine grounds for discrimination in the Equality Acts, this ground is phrased as 'religion.' But the check-list on this submission form goes beyond the descriptions in the Acts (e.g. elaborating on the word gender, and including housing assistance and poverty which are not in the Act) so you could have also explicitly clarified that this includes discrimination on the ground of nonreligious beliefs, as many people do not understand this.

Section 1: Context for the Commission's work over the next three years

What is going well for you (and your community/constituency)?

What is going well is that the Irish population is no longer under the control of the Catholic church. Atheist Ireland has succeeded in one of our initial aims, which is to normalise the use of the word atheism in Irish public life. When we started out, the word was rarely heard in the Dáil, and only as an insult or a joke. Now it is regularly used by TDs and senators, who are quoting from briefing documents that we have sent them about the impact of proposed laws on secularism.

In recent years, politicians and human rights bodies including Atheist Ireland have successfully reversed some of the knock-on effects of decades of institutionalised religious ethos against various groups in society, such as women (abortion), people who want to marry within the same sex (marriage equality) and unmarried or gay teachers (equality laws). We have also removed the medieval offence of blasphemy from the Irish Constitution.

What are the challenges and barriers that you (and your community / constituency) face, including intersectional challenges, please be specific?

We still face the challenge of direct, overt, unambiguous, institutionalised, religious discrimination against atheists. Because of the influence of the Catholic church on the Irish Constitution, our laws and public policy reflect an understanding of freedom of conscience, religion, and belief that is based on the theology of that church and not on human rights principles.

The population has been desensitised by decades of a theocratically-influenced status quo to see this as normal. Because of this, politicians and even human rights bodies including IHREC do not prioritise challenging the direct, overt religious discrimination against atheists that is written into our Constitution, laws, and public policy in a way that they would if it was directed against any other group in society.

For example, the Irish State is currently making the disgraceful argument at the European Court that obligatory religious oaths for high office are necessary in a democratic society. These oaths mean that conscientious atheists cannot become President, a judge, or a member of the Council of State which includes the Taoiseach and Tánaiste. If any other minority in society faced this overt breach of our human rights, it would be a very high priority for IHREC to consistently challenge it.

Other examples, which we will detail below, include the failure of our equality laws to positively protect nonreligious philosophical convictions in the same way as they protect religious beliefs; the religious discrimination against atheists generally in the education system; the refusal in particular of the Government to vindicate the Constitutional right to attend publicly funded schools without attending religious instruction; and religious discrimination against atheists in the Charities Act, the Electoral Act, and the Civil Registration Act.

What do you (and your community/constituency) need to thrive – to have your human rights and equality protected?

We need to amend the category of ‘religion’ under the Equal Status Act and the Employment Equality Act. These Acts just refer to ‘religion’ not ‘religion or belief.’ The definitions include “...or one has a religious belief, background or outlook and the other has not.”

This is not a reflection of the EU Equality Directive which refers specifically to ‘religion or belief’ in a way that equally respects the positive rights of atheists, secularists, and all those with nonreligious philosophical convictions.

The European Court has already found that secularism is a philosophical conviction protected by Article 9 of the Convention, along with other convictions — see list on page 10 of the Guide on Article 9 of the European Convention on Human Rights.
https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf

The Venice Commission Guidelines for Legislative Reviews of Laws Affecting Religion or Belief includes:

“3. Religion or belief. International standards do not speak of religion in an isolated sense, but of “religion or belief.” The “belief” aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. Thus atheism and agnosticism, for example, are generally held to be equally entitled to protection to religious beliefs. It is very common for legislation not to protect adequately (or to not refer at all) to rights of non-believers. Although not all beliefs are entitled to equal protection, legislation should be reviewed for discrimination against non-believers.”

The courts in Ireland have said that the State cannot discriminate under Article 44.2.3:

“If that were constitutionally possible it would enable the State to prefer religious to lay people or vice-versa, in a matter which is in no way concerned with the safeguarding or maintenance of the constitutional right to free practice of religion or freedom of conscience or of profession of religion. In my view, the State is not permitted by the Constitution to do this.” (Walsh J - Mulloy v Minister for Education)

In practice, the State’s religious discrimination against atheists is reflected in laws and policy where the State does not protect ‘beliefs’ on the grounds of conscience from discrimination. It promotes and protects religious beliefs, but does not protect non religious ‘beliefs’/philosophical convictions from discrimination. In fact it has put in place laws and policy that promote discrimination against those with nonreligious beliefs.

For example, in schools, our children do not get supervision outside the religious instruction class if they exercise their Constitutional right to ‘not attend’ religious instruction (Article 44.2.4). The State actively helps religious parents with religious beliefs but refuses to give practical application to the Constitutional right to ‘not attend’ religious instruction which is a subsection of the right to

freedom of conscience. The State assists parents with the religious education of their children and does not assist parents with non religious beliefs/philosophical convictions with the moral education of their children.

In the education system, the State actively seeks to develop values in our children to enable them to see the relevance of religion to their lives. Successive Ministers for Education have insisted that curriculum religion is suitable for all religions and none. This policy is religious discrimination (Article 44.2.3) and undermines our right to Freedom of Conscience (Article 44.1) as well as parental rights (Article 42.1).

The failure to recognise and protect people holding 'beliefs' from discrimination has meant that teachers, schools and policy makers do not equally respect the rights of people holding nonreligious beliefs. They see 'beliefs' only as a negative right. This has an impact on admissions policies and on the delivery of education within the schools.

Our children do not have access to objective sex education because the vast majority of schools have a religious ethos and integrate that ethos into curriculum Social, Personal and Health Education. The State assists religious parents with the Social, Personal and Health education of their children, but does not assist parents with nonreligious beliefs with the Social, Personal and Health education of their children.

The State has put in place legislation that permits schools with a religious ethos to refuse access to a child if that child undermines their ethos. The State has failed to protect families with non religious beliefs/philosophical convictions from discrimination in access to education despite Article 44.2.3 of the Constitution. It has put in place legislation to protect and ensure that certain religious families can educate their children in an environment which promotes certain religious values. It has failed to protect the Constitutional rights of families with non religious beliefs and indeed minority religious beliefs to ensure that the teaching of their children is in conformity with their convictions (Article 42.1).

The Public Sector Duty to eliminate discrimination and protect human rights has failed to vindicate our rights. Public bodies simply ignore it or give it lip service as religious discrimination is embedded in bodies such as the Department of Education, the ETBs and the National Council for Curriculum and Assessment.

The Charities Act refers only to 'religion' as a category not 'religion or belief.' The Charities Act and tax law discriminates against minorities with nonreligious beliefs by giving financial privileges to religious bodies only. For example, the advancement of religion is considered a charitable purpose, but the advancement of atheism is not. Religious bodies are not taxed even on income that is not raised or used for genuine charitable purposes but for political purposes such as campaigning to maintain the ban on abortion.

Organisations such as Atheist Ireland must comply with the Electoral Act 1997 which regulates political financing, including political donations and election expenses, on the funding of political donations from inside and outside the country. However, religious bodies have access to unlimited charitable donations from inside and outside Ireland to campaign politically to ensure that our Constitution, laws and policy reflect their religious aims and mission.

The Civil Registration Amendment Act 2012 is the most overtly discriminatory law that has been passed since Atheist Ireland was founded. discriminates in favour of religious bodies over nonreligious bodies, and it discriminates between different nonreligious bodies, favouring humanist bodies over atheist bodies. There is no justification for this discrimination, and the relevant Minister said in the Dail debate that the reason was that nobody wanted Elvis impersonators to be able to solemnise marriages.

Section 2: Performance of the Irish Human Rights and Equality Commission

What are your views on the issues we have addressed and our impact over the past three years? Were there gaps?

The four Strategic Priorities are good (1. Protect the rights of individual persons who face the greatest barriers to justice; 2. Influence legislation, policy and practice; 3. Engage with key organisations to address discrimination and human rights abuses; 4. Raise the quality and broaden the extent of the dialogue on human rights and equality issues).

However, in carrying out these priorities, we have not seen the emphasis that we feel is proportionate to the direct, overt, unambiguous, institutionalised, religious discrimination against atheists, in a way that we believe IHREC would prioritise if such overt discrimination was directed against any other group in society.

Tackling this religious discrimination would be consistent with three of IHREC's four priorities in use of resources, namely promoting access to justice (including the right to freedom of conscience and belief, and the right to hold high political and judicial office); socio-economic rights (including the right to access education without religious discrimination); and promoting intercultural understanding (neither the State nor the public seem to understand the positive right to nonreligious philosophical convictions).

Section 3: Achieving Change

What issues should the IHREC continue to address and build upon in our new Strategy Statement 2022-24 and programme of work as a priority?

IHREC should continue to address its existing strategic and resource priorities, but within these it should prioritise challenging the direct, overt, unambiguous, institutionalised, religious discrimination against atheists in the Irish Constitution, laws, and public policy with the same emphasis that it would if the same overt discrimination was directed against any other minority.

What emerging or other issues should the IHREC begin to address in our new Strategy Statement 2022-24 and programme of work as a priority?

Explicitly refer to combatting religious discrimination against atheists. It is literally written into our Constitution and laws. It should be a priority for IHREC. This would allow IHREC to put resources towards tackling issues such as:

Constitution

- Remove the requirement for the President, judges, and Council of State, including the Taoiseach and Tanaiste, to swear a religious oath, including asking God to direct and sustain them (12, 31, 34), and replace these with a single neutral declaration that reveals no information about the person's religious beliefs.
- Remove other religious references including in the preamble.
- Amend the clause on equality before the law to include the principle of non-discrimination (40.1).
- Rewrite the Article on education to explicitly provide for State secular education, and remove the duty of parents to provide for religious education of their children (42).
- Rewrite the Article on religion to cover freedom of thought, conscience and religion (44).
- Rewrite or remove other Articles influenced by Roman Catholicism e.g. women and mothers having a life and duties in the home (41.2).

Education System

- Vindicate the Constitutional right of all students to attend publicly funded schools without attending religious instruction.
- Ensure that all schools deliver the curriculum, including sex education, in an 'objective, critical and pluralistic manner,' as ruled by the European Court of Human Rights.
- Provide effective remedies for nonreligious parents and their children to vindicate, in practice and law, their right to equality before the law and freedom from discrimination.
- Respect the European Court of Human Rights ruling that the State cannot absolve itself from responsibility for human rights violations by delegating its responsibilities to private bodies.

Laws

- Examine all existing and future laws to ensure that there is one law for all, based on human rights and not religious doctrine.
- Amend any laws that refer to 'religion' to refer instead to 'religion or belief.'
- Amend the Employment Equality Act 1998 and Equal Status Act 2000, which allow churches, schools and hospitals and training colleges to discriminate on the grounds of religion. This discrimination is not proportionate to its purpose of protecting freedom of religion.
- Amend the Charities Act 2009, which includes the advancement of religion but not of atheism as a charitable purpose; and presumes that a gift for the advancement of religion is of public benefit. This has no legitimate purpose.
- Amend the Civil Registration Act 2004, so that religious and nonreligious bodies are treated equally when nominating solemnisers. This has no legitimate purpose.
- Amend the Electoral Act to ensure that churches are subject to political funding regulations on the same basis as secular advocacy groups. This has no legitimate purpose.

Health System

- Ensure that no religious values or activities or environments are imposed on patients who do not share those religious beliefs.
- Remove the traditional privileges that religious bodies have in healthcare service provision and decision-making.

How best can the IHREC work with and support the further development of civil society as key actors in addressing discrimination and human rights infringements?

What IHREC can do for civil society varies from sector to sector. We would like IHREC to invite us and other relevant NGOs to a workshop meeting to identify what IHREC can most effectively do in our sectors of freedom of religion or belief, equality before the law, freedom from discrimination, and the right to an effective remedy.

This would include examining what IHREC can do, and how IHREC can help us as NGOs, with regard to awareness work, discrimination in the workplace and in relation to services, taking legal action, making legislative observations, reports to international bodies, and enforcing the Public Sector Equality and Human Rights Duty.

What impact would you like to have seen from the IHREC by 2024?

- For the State and all relevant bodies, including NGOs, to understand the positive right to freedom of belief with regard to nonreligious philosophical convictions.
- For IHREC to make a submission regarding this to the coming review of the Equality Acts.
- For the Department of Education to recognise and vindicate the Constitutional right to attend publicly funded schools without attending religious instruction.
- For the Department of Education, the National Council for Curriculum and Assessment, and the Education and Training Boards to understand their Public Sector Equality and Human Rights Duty.